

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GREGORY A. COX

Claimant

VS.

MIKE HAGEN ELECTRIC

Respondent

AND

GRANITE STATE INSURANCE COMPANY

Insurance Carrier

Docket No. 223,481

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Steven J. Howard dated September 23, 1997.

ISSUES

The Administrative Law Judge denied claimant's request for temporary total disability compensation and medical benefits, finding claimant failed to prove that the Kansas Workers Compensation Act applies to this claim, and failed to prove he sustained personal injury by accident arising out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For preliminary hearing purposes, the Appeals Board finds as follows:

K.S.A. 44-534a (a)(2), as amended, gives the Appeals Board jurisdiction to review the issues raised by claimant.

Claimant alleges he was injured while working for respondent in Missouri. Respondent's business is also located in Missouri. Claimant does not allege that his principal place of employment was in Kansas. Accordingly, for the Kansas Workers Compensation Act to apply to this claim, the contract of employment between claimant and respondent must be determined to have been made in Kansas. See K.S.A. 44-506.

An employment contract is made in Kansas where the last act necessary for its formation is done in Kansas. See Smith v. McBride & Dehmer Construction Co., 216 Kan. 76, 79, 530 P.2d 1222 (1975). Claimant testified that he accepted employment with the respondent during a telephone conversation with Mike Hagen, owner of the respondent company. Claimant was located in Leavenworth, Kansas and Mr. Hagen was located in Missouri when the alleged telephone conversation took place. On the other hand, Mr. Hagen testified that he offered claimant employment and claimant accepted at the respondent's business location in Missouri.

If it is found that an employer has made an offer of employment during a telephone conversation and such offer was accepted by the claimant, the rule in this jurisdiction is that the contract of employment is made in the state where the claimant is located. See Morrison v. Hurst Drilling Co., 212 Kan. 706, 512 P.2d 438 (1973); Hartigan v. Babcock & Wilcox Co., 191 Kan. 331, 380 P.2d 383 (1963); Pearson v. Electric Service Co., 166 Kan. 300, 201 P.2d 643 (1949). However, the Administrative Law Judge found that the contract of employment between the parties was made in Missouri and not Kansas. Claimant's request for preliminary compensation benefits was denied as the Administrative Law Judge found the Kansas Workers Compensation Act did not apply to this claim.

The evidentiary record establishes, and the Administrative Law Judge found, that claimant is not credible. The Appeals Board finds that claimant accepted an offer of employment in Missouri following his interview with Mike Hagen. Accordingly, the Appeals Board finds that the Kansas Workers Compensation Act does not apply to this claim. Therefore, the issue of injury by accident arising out of and in the course of employment is not reached.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Steven J. Howard, dated September 23, 1997, is affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 1997.

BOARD MEMBER

c: James E. Martin, Overland Park, KS
John B. Rathmel, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director